

United States District Court

for the
Western District of New York



United States of America

v.

Case No. 19-mj-5181

JOSE HERRERA-GALVAZ

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the 5th day of August 2019, in Niagara County, in the Western District of New York, the Defendant, JOSE HERRERA-GALVAZ, who was then and there an alien, did knowingly and illegally attempt enter the United States and thereafter did elude examination and inspection by immigration officers;

All in violation of Title 8, United States Code, Section 1325(a)(1) and 1325(a)(2).

This Criminal Complaint is based on these facts:

Continued on the attached sheet.

Complainant's signature

DANIEL A. WHITTEN
ENFORCEMENT OFFICER
U.S. CUSTOMS AND BORDER PROTECTION
Printed name and title

Judge's signature

MICHAEL J. ROEMER
UNITED STATES MAGISTRATE JUDGE
Printed name and title

City and State: Buffalo, New York

Date: August 6, 2019

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

STATE OF NEW YORK)
COUNTY OF NIAGARA) SS:
CITY OF LEWISTON)

DANIEL A. WHITTEN, being duly sworn, deposes and states:

1. I am an Enforcement Officer with United States Customs and Border Protection (“CBP”), within the Department of Homeland Security (“DHS”), and have been so employed for the past 11 years. Prior to this position, I served as an Officer with the same agency for approximately five years. In such capacity, my duties include investigating persons who have violated Federal Immigration laws and other related Federal statutes.

2. As part of my current duties, I have become involved in an investigation of suspected violations of Title 8, United States Code, Sections 1324(a)(1)(A)(iii), 1324(a)(1)(B)(i), 1324(a)(1)(A)(v)(II), and Sections 1324 and 1325(a)(1) and (2).

3. I make this affidavit in support of the annexed criminal complaint charging Jason Orlando GARCIA (hereinafter referred to as (“Defendant I”), born October 27, 1977, who is a citizen and national of Canada, with transporting an illegal alien in violation of Title 8, United States Code, Section 1324(a)(1)(A)(ii). Additionally, the annexed complaint charges Jose HERRERA GALVAZ (hereinafter referred to as (“Defendant II”), an alien, born June 6, 1977, a citizen and national of Chile, with attempting to elude inspection by a Customs and Border Protection Officer, in violation of Title 8, United States Code, Section 1325(a)(1) and (2).

4. The Department of Homeland Security is an agency within the executive branch of the government of the United States, and is the agency responsible for making the determination to admit an applicant to the United States. Information concerning an applicant's true identity, immigration status, criminal history, and prior immigration history, such as prior removals, visa refusals, and entries, are matters material to an admissibility determination.

5. The statements contained in the affidavit are based upon my personal knowledge and upon information provided to me by other CBP Officers who are known to be reliable. Because the affidavit is being submitted for the limited purpose of securing a criminal complaint, I have not included each and every fact known to me concerning the investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that the Defendant I did knowingly violate Title 8, United States Code, Section 1324(a)(1)(A)(iii), 1324(a)(1)(B)(i), 1324(a)(1)(A)(v)(II), and that Defendant II did knowingly violate Title 8, United States Code, Section 1325(a)(1) and (2).

6. On August 5, 2019 an Ontario, Canada plated commercial truck bearing plate number 3909PZ was encountered by CBP Officer Robert Mergenhagen at 7:47PM at the Lewiston Bridge Port of Entry in Lewiston, NY in Niagara County in the Western District of New York. The truck was operated by Defendant I. CBP Officer Mergenhagen asked Defendant I if anyone else was present in the truck and Defendant I stated "No". CBP Officer Mergenhagen completed his inspection and referred Defendant I and the truck to the Vehicle and Cargo Inspection System (VACIS) for a scan of the truck. Defendant I

drove from CBP Officer Mergenhagen's inspection lane and appeared to head toward the VACIS area. Instead of reporting directly to the VACIS exam area, Defendant I drove the truck in front of the warehouse. At this time, CBP Officer Michael Badszewski saw the truck park for a brief moment in front of the warehouse, and saw an individual, later identified as Defendant II, get out of the truck and walk directly into the entrance of the warehouse. The truck then turned around in the parking lot and headed towards the VACIS examination area. CBP Officer Badszewski radioed to other officers at the Lewiston Bridge Port of Entry, and reported what he had saw. CBP Officer Badszewski gave fellow officers a description of the subject to the other officers. Upon hearing the radio transmission from CBP Officer Badszewski, CBP Officers Brad Deween, Monica Johnson, Jacqueline Rivera and Laruie Flynn, began to search the Lewiston Warehouse building for the person described by CBP Officer Badszewski. Those Officers located Defendant II in the hallway of the warehouse. Those Officers report that Defendant II appeared nervous and was speaking Spanish. CBP Officer Rivera spoke to Defendant II in Spanish and she determined that Defendant II, was, in fact, the subject that CBP Officer Badszewski saw get out of Defendant I's truck that had pulled in front of the warehouse. CBP Officer Deween secured Defendant II, and conducted a search of his person for officer safety. CBP Officer Deween found, concealed in Defendant II's pants, a Chilean passport, bearing the photograph and biographical information of Defendant II. CBP Officer Deween escorted Defendant II to the secondary inspection area for further inspection. CBP Officers stationed at the VACIS area secured Defendant I upon his arrival at the inspection area and escorted him to the secondary inspection area.

7. I arrived at the Lewiston Bridge and conducted electronic data base queries to determine the identity of Defendant II. Those database queries revealed that Defendant II was refused entry to the United States, while seeking entry to the United States, under the Visa Waiver Program, at the Toronto, Ontario Pre-flight Inspection Station on August 4, 2019. Defendant II was refused entry due to him not disclosing an arrest in Chile on his Electronic System for Travel Authorization (ESTA) application. On that date, Defendant II was advised that he is no longer eligible to travel under the Visa Waiver Program and he must obtain a Visa prior to attempting to enter the United States at any time in the future. Defendant II was not in possession of a Visa issued by the United States Government that would allow him to enter the United States at the time of his encounter. I reviewed video recordings from the Lewiston Bridge, during the time which all of the above-mention facts took place. The video recording of the primary inspection only shows Defendant I present in the cab of the truck during the primary inspection. Furthermore, another video shows the truck, operated by Defendant I stop, in front of the Lewiston Warehouse, and a male subject, identified as Defendant II, exit the cab of the truck, from the passenger side, and walk into the Warehouse building.

WHEREFORE, I respectfully submit the foregoing facts to establish probable cause to believe that on August 5, 2019 Jason Orlando GARCIA did knowingly and in reckless disregard of the fact that an alien had attempted to come to, enter and remain in the United States in violation of the law and did conceal, harbor and shield, and attempt to conceal, harbor and shield from detection said alien, in violation of Title 8, United States Code, Section 1324(a)(1)(A)(iii).

WHEREFORE, I respectfully submit the foregoing facts to establish probable cause to believe that on August 5, 2019 Jose HERRERA GALVAZ did attempt to elude inspection by a Customs and Border Protection Officer, in violation of Title 8, United States Code, Section 1325(a)(1) and (2).



DANIEL A. WHITTEN
Enforcement Officer
U.S. Customs and Border Protection

Sworn to and subscribed to before
me this 6th day of August, 2019.



MICHAEL J. ROEMER
United States Magistrate Judge